

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent Michael S. Carona currently serves as Orange County Sheriff-Coroner. He was first elected in 1998, ran unopposed in 2002, and was elected for a third term June 6, 2006. Respondent Friends of Mike Carona (Committee) is the controlled committee of Respondent Carona. Respondent Lesley Ann Stoll is the treasurer of Respondent Committee and has served as treasurer at all times relevant to this matter.

An express purpose of the Political Reform Act<sup>1</sup> (the “Act”), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. (Section 81002, subd. (a).) The Act therefore establishes a campaign reporting system designed to accomplish this purpose of disclosure. Under the Act, all financial information concerning the political activities of a candidate, including an incumbent elected officer (“officeholder”),<sup>2</sup> and his or her controlled committee is required to be maintained in detailed records and filed in public reports.

In this matter, Respondents failed to properly report officeholder expenses made with Respondent Carona’s personal funds that were not reimbursed within the statutory period as nonmonetary contributions from Respondent Carona. Respondents further failed to properly report officeholder expenses as expenditures, instead mistakenly reporting them as loans from Respondent Carona. Although the dollar amounts misreported were not insignificant, there is no evidence to suggest that the violations were the result of intentional or deliberate conduct, or that they were the result of an improper effort to gain political advantage. Rather, the violations were attributable in large part to Respondent’s inexperience with the Act. Although unintended, the result of Respondent Stoll incorrectly reporting Respondent Carona’s officeholder expenditures was that the Respondent Committee’s campaign statements overstated its financial status.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> Once an individual becomes a “candidate,” that status is retained until it is terminated. (Sections 82007, 84214.) Thus, even when an officeholder is not presently engaged in traditional campaigning, for the purposes of the Act, he or she is still considered a candidate.

For the purposes of this stipulation, Respondents' violations of the Act are stated as follows:

COUNT 1: During the reporting period October 1, 2001 through December 31, 2001, Respondents failed to report officeholder expenditures as nonmonetary contributions where the expenditures were made with Respondent Carona's personal funds and were not reimbursed within the 90-day period, in violation of Section 89511.5, subdivision (d).

COUNT 2: For the reporting period October 1, 2001 through December 31, 2001, Respondents incorrectly characterized officeholder expenditures made by Respondent Carona with his personal funds as loans from Respondent Carona to Respondent Committee, thereby failing to correctly report the total amount of expenditures made during the reporting period and the total cumulative amount of expenditures made, and also failing to correctly report the balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement, in violation of Section 84211, subdivisions (b) and (e).

COUNT 3: For the reporting period January 1, 2002 through January 19, 2002, Respondents incorrectly characterized officeholder expenditures made by Respondent Carona with his personal funds as loans from Respondent Carona to Respondent Committee, thereby failing to correctly report the total amount of expenditures made during the reporting period and the total cumulative amount of expenditures made, and also failing to correctly report the balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement, in violation of Section 84211, subdivisions (b) and (e).

COUNT 4: For the reporting period January 20, 2002 through February 16, 2002, Respondents incorrectly characterized officeholder expenditures made by Respondent Carona with his personal funds as loans from Respondent Carona to Respondent Committee, thereby failing to correctly report the total amount of expenditures made during the reporting period and the total cumulative amount of expenditures made, and also failing to correctly report the balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement, in violation of Section 84211, subdivisions (b) and (e).

COUNT 5: For the reporting period February 17, 2002 through June 30, 2002, Respondents incorrectly characterized officeholder expenditures made by Respondent Carona with his personal funds as loans from Respondent Carona to Respondent Committee, thereby failing to correctly report the total amount of expenditures made during the reporting period and the total cumulative amount of expenditures made, and also failing to correctly report the balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement, in violation of Section 84211, subdivisions (b) and (e).

COUNT 6: For the reporting period July 1, 2002 through December 31, 2002, Respondents incorrectly characterized officeholder expenditures made by Respondent Carona with his personal funds as loans from Respondent Carona to Respondent Committee, thereby failing to correctly report the total amount of expenditures made during the reporting period and the total cumulative amount of expenditures made, and also failing to correctly report the balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement, in violation of Section 84211, subdivisions (b) and (e).

COUNT 7: For the reporting period January 1, 2003 through June 30, 2003, Respondents incorrectly characterized officeholder expenditures made by Respondent Carona with his personal funds as loans from Respondent Carona to Respondent Committee, thereby failing to correctly report the total amount of expenditures made during the reporting period and the total cumulative amount of expenditures made, and also failing to correctly report the balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement, in violation of Section 84211, subdivisions (b) and (e).

COUNT 8: For the reporting period July 1, 2003 through December 31, 2003, Respondents incorrectly characterized officeholder expenditures made by Respondent Carona with his personal funds as loans from Respondent Carona to Respondent Committee, thereby failing to correctly report the total amount of expenditures made during the reporting period and the total cumulative amount of expenditures made, and also failing to correctly report the balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement, in violation of Section 84211, subdivisions (b) and (e).

## SUMMARY OF THE LAW

### Officeholder Expenditures Made with Personal Funds: Requirements

For the purpose of accurate recordkeeping and reporting, and to prevent fraud and embezzlement, the assets of political entities must be segregated from nonpolitical, personal accounts and kept in a single bank account. To achieve this end, a candidate who raises contributions of \$1,000 or more must establish a single campaign bank account into which all contributions and loans made to the candidate's controlled committee<sup>3</sup> must be deposited (Section 85201, commonly referred to as the "one bank account rule").

An incumbent elected officer ("officeholder"), however, may use his or her personal funds to make expenditures<sup>4</sup> without first depositing the funds into the one bank account, provided that the expenditures are not campaign expenses and the treasurer is provided with a dated receipt and a written description of the expenditure. (Section 89511.5.) Additionally, the officeholder may be reimbursed for personal funds expended in this manner within a 90-day period as specified by the statute. (Section 89511.5, subd. (b)(3).) If reimbursement is not made within the 90-day period, the expenditures are required to be reported as nonmonetary contributions. (Section 89511.5, subd. (d).) The Act, however, does not prohibit a local candidate who makes a contribution to his or her own controlled committee from returning that contribution to himself or herself at any time. Thus, where an officeholder declines to be reimbursed for an officeholder expense made with his or her own personal funds, and the amount becomes reportable as a "nonmonetary contribution," the officeholder may return that contribution to himself or herself.<sup>5</sup> Disclosure of such a transaction must be properly reported in the committee's campaign statements.<sup>6</sup>

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<sup>3</sup> Section 82013, subdivision (a) defines a "committee" as any person or combination of persons who directly or indirectly receives contributions totaling \$1,000 or more in a calendar year. This type of committee is commonly referred to as a "recipient" committee. Under Section 82016, subdivision (a), a recipient committee that is controlled directly or indirectly by a candidate is a "controlled committee."

<sup>4</sup> Under the Act, an "expenditure" includes a monetary or nonmonetary payment made for political purposes. (Section 82025; Regulation 18225.) Any payment made by a candidate is for political purposes, "unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to his or her candidacy or status of an office holder." (Regulation 18225.)

<sup>5</sup> Typically, where a contribution is "nonmonetary" the amount of the reimbursement would be determined by the value of the nonmonetary contribution. Here, the value is easily determined as the amount of the expenditure of the officeholder's personal funds.

<sup>6</sup> The cross-reference governing the manner of reporting is to the wrong subdivision of the section of the Act that sets forth the detailed requirements for the contents of a campaign statement. (Section 84211.) When the section was re-lettered by statute in 2000, it appears that the cross-reference to it contained in the officeholder expenditure provision was not amended to conform to the change. Prior to amendment, officeholder expenditures made with personal funds of \$100 or more to a single source were required to be itemized with all of the following information disclosed: name and address of the person receiving the expenditure, and a brief description of the consideration for which the expenditure was made. Currently, and at all times relevant to this matter, the plain language of the Act requires reporting of the "total amount of expenditures made during the period covered by the campaign statement to persons who

## Campaign Statements: Reporting Expenditures and Ending Cash Balance

The specific information that is required to be reported in a campaign statement is set forth in the Act. (Section 84211.) With regard to expenditures, the campaign statement must report “[t]he total amount of expenditures made during the period covered by the campaign statement and the total cumulative amount of expenditures made.” (Section 84211, subd. (b).) The campaign statement also must report “[t]he balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement.” (Section 84211, subd. (e).)<sup>7</sup>

The second page of the form used by candidate controlled committees for campaign reporting provides an overview of a committee’s finances. Aptly named the “Summary Page,” the information it calls for is required by the Act. (Section 84211.) The Summary Page includes the total dollar amount of loans received by a committee (by reporting period and the total for the calendar year).<sup>8</sup> It reflects the total expenditures made during the reporting period and the accrued expenses (unpaid bills). It also provides the “Ending Cash Balance,” commonly referred to as “cash on hand” for the reporting period. For the purposes of computing the Ending Cash Balance, loans are treated as contributions and included in the figure.<sup>9</sup> To get a quick idea of the total amount of money a controlled committee has to spend, the Ending Cash Balance figure is likely the first place a person would look. Thus, although an examination of the Summary Page would show how much of a candidate’s funding is in the form of loans that may eventually have to be repaid, the Ending Cash Balance is a good indicator of the total amount of cash a candidate controlled committee has immediately at its disposal, regardless of the character of the money as a loan or contribution.

## Treasurer Liability

Section 84100 provides that “[e]very committee shall have a treasurer. No expenditure shall be made by or on behalf of a committee without the authorization of the treasurer or that of his or her designated agents.” Further, Section 84100 provides that “no contribution or expenditure shall be accepted or made by or on behalf of a committee at a time when there is a vacancy in the office of treasurer.” A committee’s treasurer may be held jointly and severally liable, along with the committee, for any violation

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have received less than one hundred dollars (\$100).” (Section 84211, subd. (j).) A bill is currently pending in the Legislature to correct the cross-reference.

<sup>7</sup> Nonmonetary contributions, such as officeholder expenses that are not reimbursed within the 90-day period, as discussed above are not included as part of the Ending Cash Balance on the campaign statement.

<sup>8</sup> Detailed information regarding a particular loan, including the source of the loan and amounts repaid, is reported on the “schedule” pages of the report.

<sup>9</sup> This is consistent with the Act. Under the Act, a loan is a contribution, and is therefore treated as “a contribution unless the loan is received from a commercial lending institution in the ordinary course of business, or it is clear from the surrounding circumstances that it is not made for political purposes.” (Section 84216.)

committed by the committee. (Section 91006.)

## **SUMMARY OF THE FACTS**

Prior to filing the first semi-annual campaign statement in 2004, Respondent Stoll became aware of the specific requirements for reporting officeholder expenses paid with the personal funds of the officeholder, including the 90-day period for reimbursement. Prior to that time, for each reporting period, Respondents added up individual officeholder expenditures made by Respondent Carona with his personal funds, rounded the amount, and reported the figure as a loan to Respondent Committee from Respondent Carona. Respondents' campaign statements showed a pattern of loans to Respondent Committee from Respondent Carona, with intermittent loan repayments made in amounts less than necessary to repay the entire loan balance, with outstanding loan amounts carried forward to the next statement.

During the period when the bulk of the violations occurred, when Respondent Carona used his personal funds to make officeholder expenditures, he submitted receipts to Respondent Stoll. He customarily included a handwritten note on the reverse side of the receipt regarding the payment. Respondent Stoll would review the expenditures, add up the receipts for the period, round the total, and report the amount as a loan from Respondent Carona. The loan amounts varied from period to period, but were always reported as round numbers. Even after she ceased reporting the office accounts as loans and began properly reporting them as expenditures, the Ending Cash Balance continued to be overstated in the semi-annual statements filed in 2004.

### Failure to Report Officeholder Expenditures as Nonmonetary Contributions Where the Expenditures Were Made with Personal Funds and Not Reimbursed within 90 Days: Count 1

In December of 2001, Respondent Committee's campaign statement reports a \$60,000 "loan repayment" to Respondent Carona. During the February 17, 2002 through June 30, 2002, reporting period, Respondent Carona received approximately \$20,000 also characterized as a "loan repayment." Both the \$60,000 payment and the \$20,000 were repayments for amounts originally incurred by Respondent Carona as officeholder expenses. These amounts consisted in large part of individual officeholder expenses previously incurred by Respondent Carona that had not been reimbursed within the 90-day period. Due to the improper reporting method employed by Respondents of reporting the expenses as loans for the reporting period, amounts that remained reimbursed beyond the 90-day period were not reported as nonmonetary contributions from Respondent Carona as required by subdivision (d) of Section 89511.5 and were not thereafter reported as contributions returned to Respondent Carona.

### Failure to Report Officeholder Expenses as Expenditures: Counts 2-8

By failing to properly report officeholder expenses made by Respondent Carona with his personal funds as expenditures, and instead reporting them as loans from Respondent Carona, Respondents' reporting method had the effect of making it appear that Respondent Carona was lending personal funds to his controlled committee for deposit into the Respondent Committee's bank account. Thus, the campaign statements showed the officeholder expenditures as cash on hand, making it appear that the funds were available to be spent in the future. In fact, the money had already been expended to secure goods and services for Respondent Committee. Additionally, because the amounts were reported in round figures, instead of in actual amounts, the amounts reported looked like loans, as it would be uncommon for a candidate to loan a committee \$3,152.87, for example, but not uncommon for him or her to loan it \$3,000. Thus, due to the incorrect reporting method employed, the Ending Cash Balance of the Respondent Committee appeared larger than it was for numerous reporting periods. The chart below shows the approximate amount by which the Ending Cash Balance was overstated.

	<b>Campaign Reporting Period</b>	<b>Statement Type</b>	<b>Ending Cash Balance As Originally Reported</b>	<b>Actual Ending Cash Balance</b>	<b>Amount Overstated</b>
COUNT 2	10/1/01-12/31/01	Semi-annual (3/5/02)	\$443,175.95	\$366,672.52	\$76,503.46
COUNT 3	1/1/02-1/19/02	Pre-election (3/5/02)	\$439,392.93	\$362,889.47	\$76,503.46
COUNT 4	1/20/02-2/16/02	Pre-election (3/5/02)	\$437,875.28	\$359,871.82	\$78,003.46
COUNT 5	2/17/02-6/30/02	Semi-annual	\$421,092.37	\$333,838.91	\$87,253.46
COUNT 6	7/1/02-12/31/02	Semi-annual	\$430,297.69	\$335,544.23	\$94,753.46
COUNT 7	1/1/03-6/30/03	Semi-annual	\$427,786.60	\$321,033.14	\$106,753.46
COUNT 8	7/1/03-12/31/03	Semi-annual	\$405,507.37	\$292,753.91	\$112,753.46

### **CONCLUSION**

This matter consists of one count of violating Section 89511.5, subdivision (d), and seven counts of violating Section 84211, subdivisions (b) and (e) for a total of eight counts, which carry a maximum administrative penalty of Forty Thousand Dollars (\$40,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall

statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violation; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether the Respondent, upon learning of the violations, voluntarily filed appropriate amendments to provide full disclosure, if applicable.

In mitigation, in the summer of 2006, Respondents voluntarily filed amendments attempting to properly disclose Respondent Carona's officeholder expenditures, thereby correcting the amounts overstated in the Ending Cash Balance portion of the Summary Page of the campaign statements. Additionally, despite the error in the law regarding the itemization requirements for officeholder expenses (see footnote 6), Respondents also attempted to itemize the officeholder expenses in an effort to make full disclosure. Lastly, as a condition of settlement, prior to the presentation of this stipulation to the Commission for approval, Respondents will file amendments that itemize the officeholder expenditures of \$100 or more made during the periods at issue in this matter, as intended by the Act.

In aggravation, as discussed above, because Respondents employed an incorrect reporting method for officeholder expenses made with Respondent Carona's personal funds, Respondents' campaign statements significantly overstated the Respondent Committee's cash on hand and thus did not provide the required disclosure regarding the Respondent Committee's financial situation to the public.

The facts of this case, including the aggravating and mitigating factors addressed above, justify imposition of the following penalties:

For Count 1: failure to report officeholder expenditures as nonmonetary contributions where the expenditures were made with personal funds and not reimbursed within 90 days: \$2,000.

For Counts 3 and 4: failure to report officeholder expenses as expenditures on pre-election statements: \$2,000 for each count, for a total of \$4,000

For Counts 2, and 5-8: failure to report officeholder expenses as expenditures on semi-election statements: \$1,800 for each count, for a total of \$9,000.

The facts of this case, including the aggravating and mitigating factors addressed above, justify imposition of the agreed upon penalty of \$15,000 as appropriate in this matter.